

Jesse Merrithew, OSB No. 074564

Email: jesse@lmhlegal.com

Viktoria Lo, OSB No. 175487

Email: viktoria@lmhlegal.com

Levi Merrithew Horst PC

610 SW Alder Street, Suite 415

Portland, Oregon 97205

Telephone: (971) 229-1241

Juan C. Chavez, OSB No. 136428

Email: jchavez@ojrc.info

Brittney Plessner, OSB No. 154030

Email: bplessner@ojrc.info

Alex Meggitt, OSB No. 174131

Email: ameggitt@ojrc.info

Franz H. Bruggemeier, OSB No. 163533

Email: fbruggemeier@ojrc.info

Oregon Justice Resource Center

PO Box 5248

Portland, OR 97208

Telephone: 503 944-2270

J. Ashlee Albies, OSB No. 051846

Email: ashlee@albiesstark.com

Whitney B. Stark, OSB No. 090350

Email: whitney@albiesstark.com

Maya Rinta, OSB No. 195058

Email: maya@albiesstark.com

Albies & Stark LLC

1 SW Columbia St. Suite 1850

Portland, Oregon 97204

Telephone: (503) 308-4770

Facsimile: (503) 427-9292

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

DON'T SHOOT PORTLAND, et al.

Plaintiffs

v.

CITY OF PORTLAND, a municipal
corporation,

Defendant.

Case No. 3:20-cv-00917-HZ

DECLARATION OF JAMES COMSTOCK
IN SUPPORT OF PLAINTIFF'S MOTION
FOR CLASS CERTIFICATION

I, James Comstock, declare as follows pursuant to 28 USC § 1746:

1. I have personal knowledge of the information contained in this declaration. If called upon to do so, I could and would competently testify regarding the matters set forth herein.

2. I am a private investigator licensed by the State of Oregon. My PIID number is 52647.
3. I reside in Tigard, Oregon.
4. On June 7, 2020 I was hired by Attorney Jesse Merrithew to perform investigative tasks related to the above captioned case.
5. Between June 7, 2020 and September 5, 2020 I observed protests in Portland, Oregon both in person and remotely. From June 8 through June 15th, I wore a hat clearly marked “Insight Legal Investigation”. From July 4th through September 5th I wore a bright green hat clearly marked “National Lawyers Guild Legal Observer”. While observing in person, I did not engage in protest activities. I did not chant, call out to officers, throw items, touch any fences or barriers or physically engage police in any way. I generally kept distance between myself and protesters engaged in activities that would be considered more than passive resistance, allowing me to observe but not be deemed part of any “direct action” activities.
6. When observing remotely, I monitored multiple live video feeds broadcast by traditional media reporters, independent press, and protesters on social media and other video streaming platforms.
7. I observed protests on site in person on the following dates:
June 8, 2020, June 11, 2020, June 13, 2020, June 15, 2020, July 4, 2020, July 7, 2020, July 13, 2020, July 19, 2020, July 21, 2020, July 22, 2020, July 23, 2020, July 24, 2020, July 25, 2020, July 26, 2020, July 30, 2020, August 3, 2020, and September 5, 2020.
8. I observed protests via live video feeds nearly every night that I was not observing in person from June 9th through August 5th, with few exceptions. From August 5th through September 5th, I observed live video feeds the majority of the nights that video was available, but not every night.
9. During my observations of the protests, I observed that the number of participants varied from groups of approximately 100 people, to several thousand people.

10. I observed members of the Portland Police Bureau (PPB) as they interacted with protesters. I was able to identify PPB members by the PPB patch on their uniforms. I was generally familiar with the different insignia of Federal officers, Oregon State Police, and Multnomah County Sheriff officers. When observing in person I carried binoculars which I frequently used to verify which agency the officers which I was observing were from.

11. Beginning from the first nights that I was observing the protests in June, I noted that PPB officers would frequently use force against protesters who were passively resisting by refusing to comply with dispersal orders but not engaging PPB officers, or who were complying with police orders to move out of the area.

12. On June 11, 2020 near SW 2nd Ave. and SW Jefferson street, I observed a group of more than 50 people passively resisting by remaining in the area despite commands from the PPB ordering them to depart. A munition was deployed by PPB which caused a large explosion, and which sprayed rubber balls into the crowd of people standing. I was personally struck by the rubber balls.

13. On June 8th, 11th, 13th and 15th I observed members of the PPB using batons to strike protesters who were moving from the area as directed. I was personally struck in the back on multiple occasions with batons by PPB members while moving as directed. I observed that PPB members would march behind protesters, and then in a seemingly centrally directed effort, the officers would all begin to run at the moving crowd, hitting and pushing people with batons and their hands. This sudden change appeared to occur without provocation, and while the crowd of protesters continued to move in the direction order by the PPB. I also saw that PPB would frequently use physical force against slower protesters who, while continuing to move in the direction ordered, would fall behind the crowd, usually due to the fact that they had physical limitations or were limping from prior injury. I observed that protesters who fell while moving as

directed by PPB were tackled by officers. I frequently heard PPB officer shout “move!” at protesters who were moving away as directed. On multiple occasions, I observed protesters respond to this command by saying “I’m moving as fast as I can”. I frequently heard PPB officers respond by saying “move faster”, “then you shouldn’t be here”, “you aren’t fast enough” and “If you don’t move faster you’ll be arrested”. I was personally chased multiple blocks by a van loaded with PPB officers shouting at me that to run faster or I would be arrested.


14. During the nights that I was observing the protests in person, I observed that PPB officers would push protesters to the street that they had designated as the limit of the closed area. I observed that it was common for the officers to load up on a van to leave, but to deploy a munition into the crowd as they departed. This would not be in response to physical action by the protesters. Rather, it appeared to be in response to jeers and insults from the protesters, or simply in response to nothing at all. Similarly, I observed that frequently when a van loaded with officers would depart, one or more PPB officers would fire FN303 munitions with a powder payload at the ground near group of protesters. This had the effect of dispersing the irritant powder from the rounds into the air, similar to spraying tear gas, causing the group of protesters to have difficulty breathing and seeing, due to the effects of the powder.

15. On the evening of August 3rd, 2020 near the Penumbra Kelly building at 47th and E Burnside, a line of PPB officers was pushing protesters east on Burnside. A PPB officer with what appeared to be the number 48 on his helmet (or possibly 40 or 46) approached a retreating protester to my left. The officer was large, and he appeared to have a short gray beard. The protester continued to move east, while holding up a shield. The officer rushed at the protester holding out a canister in his left hand and, using the canister, pushed down the shield and sprayed the protester with a white foamy irritant. At the same time, the officer sprayed me, and protesters who were around me. At this time, I was wearing a bright green National Lawyers Guild Legal

Observer hat. My face and arms were covered with irritant, making it difficult to see or breathe.

16. Throughout the nights that I spent observing protests in Portland, I repeatedly saw PPB officers fire munitions seemingly indiscriminately into large crowds of protesters, hitting people who were engaged in passive resistance, or who were complying with PPB commands. It was often unclear to me if those who were hit were collateral damage as officers attempted to fire at someone engaged in more than passive resistance, or if officers were simply firing at those who were passively resisting and/or not complying as fast as the officers wished.

Executed on January 9, 2022.


James Comstock